

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

FEB -3 2011

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2010-0131
)	DEPARTMENT A
Appellee,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
MODESTO GUILLEN, III,)	the Supreme Court
)	
Appellant.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20084033

Honorable Jose Robles, Judge Pro Tempore

AFFIRMED

Emily Danies

Tucson
Attorney for Appellant

H O W A R D, Chief Judge.

¶1 Following a two-day jury trial, appellant Modesto Guillen was found guilty of theft by control of property valued more than \$4,000 but less than \$25,000 and second-degree trafficking in stolen property. The trial court sentenced him to concurrent, presumptive prison terms of 11.25 years for each offense. Counsel has filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), asserting she has reviewed the record thoroughly but found no arguable issue to raise on appeal. Consistent with *Clark*, 196 Ariz. 530, ¶ 32, 2 P.3d at 97, she has provided “a detailed factual and procedural history of the case with citations to the record” and asks this court to search the record for fundamental error. Guillen has not filed a supplemental brief.

¶2 Viewing the evidence in the light most favorable to sustaining the verdicts, *see State v. Tamplin*, 195 Ariz. 246, ¶ 2, 986 P.2d 914, 914 (App. 1999), we find there was sufficient evidence to support the jury’s findings of guilt. On September 4, 2008, Guillen went to a secondhand store and sold, for \$500, a bracelet and two watches having a total value of approximately \$5,500. The items had been stolen from two residences on September 2 and 3. *See* A.R.S. §§ 13-1802(A)(5); 13-2307(A); *see also* A.R.S. § 13-2305 (1)-(3) (absent satisfactory explanation, jury may infer possessor of property “aware of the risk that it had been stolen” if property recently stolen or sold “at a price substantially below its fair market value” or “without the usual indicia of ownership”).

¶3 Guillen’s sentences were within the prescribed statutory range and were imposed lawfully. *See former* A.R.S. § 13-604(D);¹ *see also* §§ 13-1802(G), 13-2307(C). Pursuant to our obligation under *Anders*, we have searched the record for fundamental, reversible error and, having found none, we affirm Guillen’s convictions and sentences.

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ J. William Brammer, Jr.

J. WILLIAM BRAMMER, JR., Presiding Judge

/s/ Philip G. Espinosa

PHILIP G. ESPINOSA, Judge

¹The Arizona criminal sentencing code has been amended and renumbered, *see* 2008 Ariz. Sess. Laws, ch. 301, §§ 1-120, effective “from and after December 31, 2008.” *Id.* § 120. We refer in this decision to the sentencing statute in force at the time of Guillen’s offenses. *See* 2008 Ariz. Sess. Laws, ch. 24, § 1.